IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28754 of 2007(W)

PETITIONER:

MONY DAMODHARAN, S/O. DAMODHARAN,
AGED 54 YEARS, ASST.ENGINEER, KALLADA IRRIGATION
PROJECT (L.B) LEFT BANK, SECTION NO.28/19,
KOTTIYAM, RESIDING AT "CHARUTHA", MAYYANADU P.O.,
KOLLAM DISTRICT.

BY ADV. SMT.REKHA VASUDEVAN
SRI.JAMES ABRAHAM (VILAYAKATTU)

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY ITS PRINCIPAL SECRETARY, WATER RESOURCES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER,
WATER RESOURCES AND ADMINISTRATION,
THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P.(C) No. 28754 of 2007

Dated this the 27th day of September, 2007

JUDGMENT

The petitioner is now working as an Assistant Engineer in the Water Resources Department, commenced service as a III Grade Overseer in the Public Works Department. Thereafter he was appointed as an Overseer Grade II. He was promoted as Overseer Grade I with effect from 5.11.1984. In the seniority list of I Grade Overseers for the period from 15.6.1973 to 31.5.1987, the petitioner claims that he was placed as Sl.No.1520.

2. In 1990, Public Works Department was bifurcated as Public Works Department and Irrigation Department. The petitioner opted to continue as I Grade Overseer in the Irrigation Department. In 1994, the petitioner acquired a Degree and he was appointed as an Assistant Engineer, on direct recruitment against the quota reserved for in-service candidates, under the relevant Special Rules. The petitioner, therefore, is entitled to reckon his seniority as an Assistant Engineer only from the date of effective advice of the Public Service Commission in relation to the post of Assistant Engineer to which he was recruited directly.

3. The grievance of the petitioner apparently arose when persons, who were junior to him in the category of I Grade Overseer were promoted as Assistant Engineers under the Diploma Quota. The petitioner made reference

to retrospective date of promotion given to Smt.Kochurani on revision of the seniority list relating to Assistant Engineers under the Diploma Quota. The net result was that a person who was junior to the petitioner in the cadre of Overseer Grade I and who had actually been promoted as an Assistant Engineer under the Diploma Quota, secured a notional promotion as Assistant Engineer under the Diploma quota prior to the date on which the petitioner was recruited to the post of Assistant Engineer under the Degree Quota. The petitioner, therefore, sought for reckoning his seniority in the quota for Assistant Engineers with reference to the date prior to a date on which he actually entered service as an Assistant Engineer (Degree Holder).

4. This aspect has been considered by the Government in detail in Ext.P9 order and the same was rejected. It is Ext.P9 which has been challenged in the writ petition.

5. In my view, the petitioner's claim for assigning his seniority with reference to the date prior to the date on which he was actually appointed as an Assistant Engineer, on advice from the Public Service Commission, namely 16.3.1994, is misconceived. The seniority of a person in the cadre, where appointment was made by direct recruitment, will have to be reckoned with reference to his effective advice. Undisputedly, this has been done in the case of the petitioner. What the petitioner seeks is a date of effect of appointment, which is prior to the date on which he was actually recruited to the post of Assistant Engineer. This is misconceived. The petitioner cannot embark upon a comparison with the date of effect of promotion given to Smt.Kochurani who was his junior in the cadre of I Grade Draftsman. The

seniority of Smt.Kochurani will have to be reckoned in the quota for Diploma holders. There is no question of any interse seniority as regards the petitioner and Smt.Kochurani, because the two different quotas have been held to be "Water-tight compartments" by this Court as well as the Supreme Court. In my view, the claim made by the petitioner is misconceived. There is no error of law or fact in Ext.P9.

The writ petition is dismissed.

V.GIRI, JUDGE

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